

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeem G. Kelly.

Pacific Gas and Electric Company

Docket Nos. ER04-415-000,
ER04-415-001, ER04-415-002

ORDER ACCEPTING AGREEMENTS,
DENYING WAIVER, AND DIRECTING COMPLIANCE

(Issued November 30, 2004)

1. In this order, we accept for filing Pacific Gas & Electric Company's (PG&E) Generator Special Facilities Agreements (GSFA) and Generator Interconnection Agreements (GIA) (collectively, Agreements) with Berry Petroleum Company-Tannehill Cogen (Berry Tannehill), Berry Petroleum Company – University Cogen (Berry University), and Big Creek Water Works, Ltd. (Big Creek). We also accept PG&E's Interim Special Facilities Agreement and Interim Parallel Operating Agreement (Interim Agreements) with Big Creek. However, we deny waiver of the Commission's 60-day prior notice requirement and make the Agreements and Interim Agreements effective March 21, 2004. Finally, we direct compliance with Order No. 2003. This order benefits customers by ensuring that the terms and conditions of service are just and reasonable.

I. Background

2. On January 20, 2004, PG&E submitted the Agreements and Interim Agreements for filing with the Commission. PG&E explains that all three generators currently are qualifying facilities (QFs) under section 210 of the Public Utility Regulatory Policies Act of 1978 (PURPA)¹ and were interconnected with PG&E's transmission system under contracts dating back to 1986 that were not required to be filed with this Commission because the QFs sold their entire electrical output directly to PG&E pursuant to agreements approved by the California Public Utilities Commission (CPUC).² However,

¹ 16 U.S.C. § 824a-3 (2000).

² See *Western Massachusetts Electric Co.*, 59 FERC ¶ 61,091, *reh'g denied*, 61 FERC ¶ 61,182 (1992), *aff'd sub nom. Western Massachusetts Electric Company v. FERC*, 165 F.3d 922 (D.C. Cir. 1999).

each of the generators subsequently elected to engage in sales of electric power in wholesale markets.³ On May 17, 2001, PG&E executed the GSFA with Berry Tannehill and Berry University. On June 8, 2001, PG&E executed the GIA with Berry Tannehill and Berry University. On November 12, 2003, PG&E executed the GSFA and GIA with Big Creek. Big Creek's Interim Agreements were dated January 25, 1999.

3. PG&E states that the GSFA governs the special facilities that interconnect the generators to PG&E's transmission systems and the GIA establishes the operating protocols and business relationship between the generators and PG&E. PG&E's filings include cost-of-ownership charges for the generators to compensate PG&E for the cost of maintaining these special facilities. PG&E states that credits for the network upgrades are not required, since the Agreements involve generators that have been interconnected for a long time rather than new generators.

4. A March 17, 2004, deficiency letter sought additional information from PG&E related to wholesale sales under the Berry Tannehill and Berry University Agreements, and costs recovered under the Agreements. PG&E filed an amended filing on April 16, 2004, which among other things requested that the Commission withdraw or otherwise cancel the Berry Tannehill and Berry University Agreements. The parties then filed a motion for deferral of consideration and several extensions to give them additional time to negotiate revisions to the Berry Tannehill and Berry University Agreements. On October 1, 2004, PG&E filed, with Berry Petroleum Company's (Berry) concurrence, a revised amended filing after negotiations with Berry that resolves all of the issues and results in refunds to the customers (October 1 filing).

5. In its October 1 filing, PG&E explains that Berry Tannehill and Berry University engaged in sales of electric power in wholesale markets beginning on or about June 14, 2001, which would have required that the Berry Tannehill and Berry University Agreements be on file with the Commission. Beginning January 1, 2003, Berry Tannehill and Berry University ceased their wholesale sales and began direct sales to PG&E pursuant to power purchase agreements authorized by the CPUC. PG&E nevertheless requests that the Berry Tannehill and Berry University Agreements be accepted by the Commission regardless of whether the generators are engaged in sales of electric power in wholesale markets, or sales to PG&E pursuant to power purchase agreements authorized by the CPUC.

³ PG&E states that subsequent to executing the Agreements, the Berry Tannehill generator and the Berry University generator elected to resume selling exclusively to PG&E.

6. PG&E requests a waiver of the Commission's 60-day prior notice requirement to permit the: (1) Berry Tannehill GSFA to become effective on May 17, 2001, and the Berry Tannehill GIA to become effective on May 1, 2001; (2) Berry University GSFA to become effective on May 17, 2001, and the Berry University GIA to become effective on May 30, 2001; and (3) Big Creek GSFA, GIA, and Interim Agreements to become effective on February 1, 1999.

II. Notices, Interventions, Protests, and Answers

7. Notices of PG&E's filings were published in the *Federal Register*, 69 Fed. Reg. 5530 (2004), 69 Fed. Reg. 22785 (2004) and 69 Fed. Reg. 64042 (2004) with protests or motions to intervene due on or October 22, 2004. Berry filed a timely motion to intervene.

III. Discussion

8. Pursuant to Rule 214 of the Commission's Rule of Practice and Procedure, 18 C.F.R. § 385.214 (2004), the timely, unopposed motion to intervene makes Berry a party to this proceeding.

9. The Commission's preliminary analysis of PG&E's filings indicates that the proposed Agreements and Interim Agreements appear to be just and reasonable and have not been shown to be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we will accept the proposed Agreements and Interim Agreements for filing, without hearing or suspension, with the effective date described below.

10. Regarding the effective date, PG&E requests waiver of the Commission's prior notice requirements. PG&E, however, has identified no extraordinary circumstances that would justify granting waiver of our prior notice requirement to allow its requested effective dates.⁴ Accordingly, we will deny PG&E's request for waiver of our prior notice requirements, with the effective dates following 60 days from the date PG&E first tendered this filing. In cases in which waiver is denied and the proposed rate goes into effect after service has commenced, the Commission requires the utility to refund to its customers the time value of the revenues collected pursuant to section 35.19 or our regulations⁵ for the entire period that the rate was collected without Commission

⁴ *Central Hudson Gas & Electric Co.*, 60 FERC ¶ 61,106, *reh'g denied*, 61 FERC ¶ 61,089 (1992).

⁵ 18 C.F.R. § 35.19a (2004).

authorization.⁶ Accordingly, we order PG&E to refund to the customers within 30 days of the date of this order the time value of revenues collected for service under the Agreements and Interim Agreements. We note in this regard that for the Berry Tannehill and Berry University Agreements, PG&E has negotiated a refund amount, with interest, but this refund amount does not appear to cover time value refunds associated with PG&E's failure to timely file the Agreements.

11. Finally, because PG&E made its filing on January 20, 2004, which was the effective date of Order No. 2003, it is subject to the requirements of Order No. 2003.⁷ Therefore, we will direct PG&E to comply with Order No. 2003 within 30 days of the date of this order. The compliance filings will be made effective December 1, 2004.

The Commission orders:

(A) PG&E's proposed service agreements are hereby accepted for filing, to become effective March 21, 2004, without hearing or suspension.

(B) Waiver of the Commission's 60-day prior notice requirements is hereby denied, as explained in the body of this order.

(C) PG&E is hereby ordered to make refunds to Berry University, Berry Tannehill, and Big Creek within 30 days of the date of this order, as discussed in the body of this order.

(D) PG&E is hereby directed to file a refund report with the Commission within 15 days of the date refunds are made pursuant to Ordering Paragraph (C) above.

⁶ See *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139 at 61,979-80, *clarified*, 65 FERC ¶ 61,081 (1993).

⁷ *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, 68 Fed. Reg. 49,845 (Aug. 19, 2003), FERC Stats. & Regs. ¶ 31,146 at P 911 (2003) (applying grandfathering protection to interconnection agreements filed before the effective date of Order No. 2003), *order on reh'g*, Order No. 2003-A, 69 Fed. Reg. 15,932 (March 26, 2004), FERC Stats. & Regs. ¶ 31,160 (2004), *reh'g pending*.

(E) PG&E is hereby directed to submit a compliance filing within 30 days of the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.